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No. 82-116

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

GREATER WASHINGTON CENTRAL LABOR COUNCIL,

Petitioner,

FOOD AND ALLIED SERVICE TRADES COUNCIL OF METROPOLITAN WASHINGTON

Intervenor,

v.

DISTRICT OF COLUMBIA

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT FROM THE DISTRICT OF COLUMBIA COURT OF APPEALS

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QUESTIONS PRESENTED

Whether the unilateral act of a local legislative body violates the United States Constitution and enactments of the United States Congress when the act purports to:

(1) Abolish the jurisdiction of the United States Courts to hear appellate and enforcement procedures under the workers' compensation system established by the United States Congress for the benefit of employees of private sector District of Columbia employers; and

(2) Abolish the administrative jurisdiction of the United States Department of Labor to administer the workers' compensation system for employees of private sector District of Columbia employers.

PARTIES TO THE PROCEEDINGS

The parties to the proceeding below in the District of Columbia Court of Appeals were petitioner, The Greater Washington Central Labor Council, *et al.*; intervenor, the Food and Allied Services Trades Council of Metropolitan Washington; the respondent, District of Columbia. The Greater Washington Board of Trade's motion for intervention was denied.

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DISTRICT OF COLUMBIA

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT FROM THE DISTRICT OF COLUMBIA COURT OF APPEALS

JURISDICTIONAL STATEMENT

The judgment of the District of Columbia Court of Appeals was entered on January 28, 1982. Petitioner Greater Washington Central Labor Council, *et al.*'s petition for rehearing *en banc* was denied on April 28, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

OPINIONS BELOW

The opinion of the Honorable John F. Doyle, Judge of the Superior Court of the District of Columbia, dated September 26, 1980, is an unreported opinion. (Appendix, p. 20a).

The opinion of the District of Columbia Court of Appeals dated January 28, 1982, is as yet unreported. (Appendix, p. 36a). The order of the District of Columbia Court of Appeals denying the petition for rehearing *en banc* was entered on April 28, 1982, and is as yet unreported. (Appendix, p. 58a)

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

I. Acts of Congress

District of Columbia Self-Government and Governmental Reorganization Act of 1973, Pub. L. No. 93-198, 87 Stat. 774.

Longshoremen and Harbor Workers' Compensation Act, 44 Stat. 1427, 33 U.S.C. §§901 *et seq.*

Workmen's Compensation Law of the District of Columbia, Act of May 17, 1928, 45 Stat. 600, D.C. Code, 1973 §36-501.

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IV. Acts of City Council

District of Columbia Workers' Compensation Act of 1979, D.C. Law 3-77

V. United States Constitution

Article I, Section 8, Clause 17
Article VI, Section 2

STATEMENT OF THE CASE

I. Legislative Background and the Administrative Process of Workers' Compensation in the District of Columbia

In 1928, the United States Congress enacted legislation to provide a workers' compensation system for the benefit of employees of employers doing business in the District of Columbia. Act of May 17, 1928, 45 Stat. 600; D.C. Code, 1973, §36-501 (Statutory Appendix, p. 5a). This act made the provisions of the Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1427, 33 U.S.C. §901, *et seq.* (hereinafter "Longshore Act") (Statutory Appendix, p. 6a) applicable to workers' compensation claims brought by such employees, ". . . irrespective of the place where the injury or death occurs," D.C. Code, 1973 §36-501.

Pursuant to a Congressional mandate, the United States Department of Labor established a three-tier administrative system to handle claims brought under §36-501. Following an informal conference, the hearing examiner issues a recommendation as to the disposition of a claim. Either party may then request a formal hearing before a Department of Labor Administrative Law Judge. 33 U.S.C. §919(b) (Statutory Appendix, p. 7a). The final step in the administrative process is an appeal to the Benefits Review Board.

The entire administrative procedure involves federal employees and federal office buildings. Regulations are drafted by the Secretary of Labor, and amendments to the Longshore Act are passed from time to time by the United States Congress.

After the administrative process has been exhausted, an appeal may be pursued to the United States Court of Ap-

peals for the circuit in which the injury occurred.[1] Finally, since issues arising under §36-501 involve interpretations of federal law, unlike cases arising under the workmen's compensation laws of the various states, review in the Supreme Court of the United States is often available. *See, e.g., Potomac Electric Power Company* v. *Director, Office of Workers' Compensation Programs,* 449 U.S. 268 (1980); *Thomas* v. *Washington Gas Light Company,* 330 U.S. 469 (1980).

On April 16, 1979, the Mayor of the District of Columbia transmitted legislation to the Speaker of the House of Representatives that sought specific permission from Congress for the City Council to transfer jurisdiction of the workers' compensation system to the District of Columbia government. This bill, however, has never been acted upon.

Undaunted by Congress' refusal to grant the requisite legislative authority to establish its own private sector compensation system, the City Council drafted and enacted the District of Columbia Workers' Compensation Act of 1979 (Statutory Appendix, p. 17a). The Council took this

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[1]Since many cases brought under D.C. Code, 1973 §36-501 involve injuries received in Maryland, Virginia and the District of Columbia, the United States Court of Appeals for the Fourth Circuit and the United States Court of Appeals for the District of Columbia Circuit are often called upon to decide cases arising under the Act. Because of the broad jurisdiction encompassed by this legislation, however, each and every United States Circuit Court of Appeals may be called upon to decide a case under §36-501. For instance, if an employee of a D.C. employer were injured while on a business trip in California, the Ninth Circuit would be the appropriate circuit to hear an appeal by the claimant or employer. *Compare Home Indemnity Co.* v. *Stillwell,* 597 F.2d 87 (6th Cir.), *cert. denied,* 444 U.S. 869 *with Director, Office of Workers' Comp. Programs* v. *National Van Lines,* 613 F.2d 972 (D.C. Cir. 1979).

action in spite of legal memoranda presented by the Solicitor of Labor which concluded that the Council had no authority to replace the system administered by the federal government without an *express* grant of authority. Moreover, the Council ignored the report of its own Auditor, which concluded that the proposed legislation would not serve the interests of the District of Columbia or "of the workers, employers, or carriers and self-insurers." On May 14, 1980, the new Act was signed by the Mayor and became effective on July 1, 1980.

In essence, the new Act totally disbands a substantial segment of the United States Department of Labor; eliminates numerous federal jobs; eliminates an intermediate appeal to the Benefits Review Board; reduces or eliminates compensation benefits to many future claimants; and perhaps most significantly, transfers appellate and enforcement proceedings from the United States Courts to the Courts of the District of Columbia.

II. Limitations on the Legislative Authority of the District of Columbia City Council

Pursuant to Article I, Section 8, Clause 17 of the United States Constitution (Statutory Appendix, p. 18a), the United States Congress was given complete legislative authority over all District of Columbia affairs. Of necessity, the legislative authority of the District of Columbia government is strictly limited to whatever power Congress specifically delegates to the City Council.

A limited delegation was accomplished on December 24, 1973, when the District of Columbia Self-Government and Governmental Reorganization Act of 1973, Pub. L. No. 93-198, 87 Stat. 774 ("Self-Government Act") (Statutory Appendix, p. 1a) was enacted. The Self-Government Act,

however, contains no specific grant of authority to the District of Columbia to administer a workers' compensation system for private sector employees. In fact, Congress specifically restricted the City Council's legislative powers in §602 of the Act, which is now codified at D.C. Code, 1981 §1-233 (Statutory Appendix, p. 11a).

The legislative history of the restrictions listed in §602 is somewhat complicated due to the number of subcommittee and full committee drafts that were written before §602 finally took its ultimate form. The original bill, H.R. 9056, that was introduced in the House of Representatives on June 28, 1973, contained a §602 entitled "Limitations on the Council," which included a subsection (c) that granted the City Council and the Mayor total authority over the D.C. Court system 18 months after the Charter was approved by the electorate. This power included the right to appoint judges, to select the Chief Judge and to effect any changes in the jurisdiction or structure of the entire court system.[2]

After H.R. 9056 was sent to the Committee on the District of Columbia, Congressman Brock Adams offered amendments to §602 which were unanimously adopted by the Committee on July 24, 1973.[3] The amendments eliminated subsection (c) and modified subsection (a)(4) to eliminate any power that the City Council was to receive under the old subsection (c). In large part, the amendments were precipitated by objections to any transfer of

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[2]Home Rule for the District of Columbia, 1973-74 Background and Legislative History of H.R. 9056, H.R. 9682 and Related Bills, 93rd Cong. 2d Sess., Vol. II, p. 942 (H.R. Comm. Print 1974).

[3]Home Rule for the District of Columbia, 1973-74 Background and Legislative History of H.R. 9056, H.R. 9682 and Related Bills, 93rd Cong. 2d Sess., Vol. II, pp. 1098-99 (H.R. Comm. Print 1974).

power over the judiciary to the City Council, even with an 18-month lead-in period as proposed in the original subsection (c). Letters from Chief Judge Reilly[4] of the District of Columbia Court of Appeals and Chief Judge Greene[5] of the Superior Court voiced great concern over the loss of judicial independence if the Mayor and City Council received the powers proposed. Chief Judge Reilly stated:

> In my opinion, the provisions of the bill relating to the Nominating Commission, the Commission on Judicial Disabilities, and *the authority of the Council eventually to pass acts "affecting all aspects of such courts"* severely impair the insulation from political pressures which the Judicial Reorganization Act of 1970 sought to bring about. [emphasis added].

Chief Judge Greene stated his objection more emphatically. After criticizing the proposed authority of the Mayor to appoint judges to the District of Columbia Court of Appeals and Superior Court, on the grounds that H.R. 9056 (the original draft of the Self-Government Act) did not confer statehood, he stated:

> , Similar considerations apply to provisions in the bill which would grant authority to the Council to pass acts "affecting all aspects of [the] courts", apparently including their "structure, organization, [and] jurisdiction." This grant of authority to a city council with respect to a court of general jurisdiction would appear to be unprecedented in the United States.

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[4] *Id.* pp. 1416-18.
[5] *Id.* pp. 1418-24.

Thereafter, the full committee adopted Chief Judge Greene's recommendations with respect to §602(c), as well as many changes to Article IV.[6]

Subsections (a)(3), (a)(5) and (b) remained unchanged except that subsection (a)(5) was renumbered (a)(8).

Section 602, in its amended form (Statutory Appendix, p. 2a), was then reported by the Committee along with the rest of the Act to the House of Representatives as H.R. 9682. Section 602 of the ultimately enacted Public Law remains essentially identical to the version reported by the full committee.

The limitations stated in §602 are express restrictions on the City Council. The Self-Government Act did not and could not grant full statehood to the District. Many of the subsections probably are not necessary in light of the Supremacy Clause of the United States Constitution, but the fact that Congress felt compelled to include §602 in the Self-Government Act only leads to the conclusion that Congress was very concerned with the possible abuses of legislative authority that the City Council might engage in.

This legislative history and a complete understanding of the current workmen's compensation system led the District of Columbia Superior Court to conclude that the new Act violated a number of express restrictions in §602, and to enter a declaratory judgment that the new Act was null and void (Appendix, p. 20a). A three-judge panel of the District of Columbia Court of Appeals reversed the Superior Court (Appendix, p. 36a). The Court split evenly on the Petition for Rehearing *En Banc,* thus affirming the panel decision (Appendix, p. 59a). Judge Belson, however,

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[6] *Id.* pp. 1424-25.

expressed concern over the failure of the panel to fully address the effect of the new Act on the federal court system.

ARGUMENT

I. A Writ of Certiorari Should Issue to Determine Whether the District of Columbia City Council Has Been Preempted from Legislating in the Area of Workers' Compensation.

> I favor rehearing *en banc* in this case. The plain fact is that the District of Columbia Workers' Compensation Act of 1979 has effectively transferred a class of cases from the federal courts to the District of Columbia courts.
>
> Associate Judge Belson's Statement on Petition for Rehearing *En Banc*

Judge Belson's clear and irrefutable statement that the new Act transfers "a class of cases" from the federal courts to the D.C. local courts is, in short, all that needs to be said to conclude that the District of Columbia City Council grossly abused its limited legislative authority when it passed the District of Columbia Workers' Compensation Act of 1979. Any unilateral act by a state or local government that purports to reduce the power of the federal courts necessarily constitutes a flagrant violation of our federal system of governments. *See, Terral* v. *Burke Construction Company,* 257 U.S. 529 (1922); *Home Insurance Co.* v. *Morse,* 87 U.S. (20 Wall.) 445 (1874); *Chicago & N.W. Railway Company* v. *Whitton's Administrator,* 80 U.S. (13 Wall.), 7820 (1871); *Payne* v. *Hook,* 74 U.S. (7 Wall.) 425 (1869); *Akin* v. *Louisiana National Bank of Baton Rouge,* 322 F.2d 749 (5th Cir. 1963); *Rubel Jones Agency, Inc.* v. *Jones,* 165 F.Supp. 652 (W.D. Mo. 1958).

It is a basic principle of our system that "state legislation cannot confer jurisdiction upon the federal courts, nor can it limit or restrict the authority given by Congress in pursuance of the Constitution." *Home Insurance Company, supra,* at 453. Transferring jurisdiction of workers' compensation claims to the District of Columbia local courts is a blatant attempt by the City Council to remove from the federal courts a class of cases explicity delegated to them by Congress through D.C. Code, 1973, §36-501.

Not only was the City Council denied the express authority it originally sought from Congress to effect this transfer, it is expressly prohibited from enacting such legislation by the United States Constitution and the Self-Government and Governmental Reorganization Act. This legislative abuse can only be rectified by the issuance of a Writ of Certiorari.

A. The Congressional Enactment of the Workers' Compensation System in the District of Columbia Preempts Local Legislation.

The Constitution of the United States, Article I, Section 8, Clause 17, vests in Congress an exclusive plenary power to legislate for the District of Columbia. *See, Palmore* v. *U.S.*, 411 U.S. 389 (1973). Congress may employ any necessary and proper means to fulfill this duty, including the delegation of certain self-governmental authority to the local government. Accordingly, the District of Columbia Self-Government and Governmental Reorganization Act of 1973, Pub. L. No. 93-198, 87 Stat. 774 ("Self Government Act") conferred a limited scope of legislative authority upon the City Council of the District of Columbia. *See, District of Columbia* v. *Washington Home Ownership Council,* 415 A.2d 1349 (D.C. App. 1980)

(emergency legislation held invalid after 180-day period); *Bishop* v. *District of Columbia*, 401 A.2d 955, *as modified*, 411 A.2d 997 (D.C. App. 1980) (*en banc*) (professional tax invalid exercise of legislative authority under Home-Rule Act); *Capitol Hill Restoration Soc., Inc.* v. *Moore*, 410 A.2d 184 (D.C. App. 1979) (City Council's attempt to expand jurisdiction of D.C. Court of Appeals held to exceed Home Rule Act legislative authority); *Apartment & Office Building Assn'n of Metropolitan Washington* v. *Washington*, 343 A.2d 323 (D.C. App. 1975) (rent control regulations held to exceed legislative authority under the District of Columbia Rent Control Act of 1973, D.C. Code §45-1622).

The City Council has absolutely no inherent legislative authority; it may only exercise those legislative powers that are explicitly delegated to it by the Self-Government Act. The Mayor and the City Council are ". . . mere agents of the Congress" having "only such authority to promulgate regulations as the Congress has specifically vested in them in any given field." *Id.* at 329. Any areas of legislative authority not explicitly delegated to the City Council by the Act are necessarily reserved exclusively for Congressional action. Any attempt by the City Council to legislate in such an area is beyond the limited power delegated to that body, and therefore invalid, and is, of course, preempted by virtue of the Supremacy Clause of the United States Constitution.

The vital question to be addressed in this case is whether Congress intended to delegate the authority to create workers' compensation legislation to the City Council, or to exclusively occupy this field of regulation itself. Ordinarily, the issue of preemption arises when a state attempts to regulate a subject that is forbidden to it because "there is explicit or implicit exclusion of state regulation by Con-

gress." *City of Cleveland* v. *Public Utilities Commission of Ohio,* 414 N.E.2d 718, 720 (Ohio 1980). When Congress is acting within an area that is delegated to it by the Constitution, and state legislation poses an obstacle to the accomplishment of Congressional purposes and objectives, state law is preempted by virtue of the Supremacy Clause; "the government of the Union though limited in its powers is supreme within its sphere of action." *McCulloch* v. *Maryland,* 17 U.S. (4 Wheat.) 159, 199 (1819).

The situation is somewhat different when the legislation in question is enacted not by a state, but by the City Council of the District of Columbia. A state government is endowed with inherent legislative authority, and preemption occurs only when Congress takes steps to exclude certain areas from the reach of the state legislature. The District of Columbia City Council, on the other hand, has only such legislative authority as it is given by Congress by virtue of the Self-Government Act. If the Act does not include a delegation of authority over workers' compensation, then this lack of delegation is in itself the manifestation of Congress' intent to occupy the area itself, for any legislative authority not granted to the Council necessarily remains exclusively the province of Congress.

The limitations within the Self-Government Act on the City Council's legislative power, along with the fact that at the time the Act was passed Congress left existing federal legislation regarding workers' compensation for the District of Columbia private sector intact, clearly indicate that Congress had no intention of transferring authority over this area of regulation to the local government. Specific provisions were made in Title 2, §204 (Statutory Appendix, p. 1a) of the Act to transfer certain federal functions regarding D.C. public employment services, including workmen's compensation for government employees,

from the U.S. Department of Labor to the District of Columbia government. There is absolutely no mention, however, of transferring authority over the private sector workers' compensation program to the City Council.

Congress' express transfer of certain functions of the Labor Department creates a strong inference of a Congressional intent to leave the status of the private sector workers' compensation program unchanged. Had Congress intended to effectuate a transfer of the workers' compensation program, it certainly could have done so by repealing the 1928 Workmen's Compensation Act and granting the District City Council the power to enact its own workers' compensation legislation. This was not done. By not delegating authority to the Council to legislate in this area, and by not repealing 36 D.C. Code §501, Congress retained exclusive legislative authority over this subject.

In spite of a memorandum to the City Council from the Assistant Secretary of the Department of Labor, in February of 1980, warning that the Self-Government Act did not confer such legislative authority, the Council proceeded to pass its own Workers' Compensation Act which removes this subject from the U.S. Department of Labor and the federal courts, and confers it upon a local administrative agency and the District of Columbia courts.

The new Workers' Compensation Act is not only utterly incompatible with the existing federal legislation, but it purports to repeal the federal statute. The City Council has no authority to legislate in the area of workers' compensation at all, let alone repeal a Congressional enactment. That the City Council would presume to overstep the bounds of its limited authority to such an extent is preposterous, and makes a mockery of the doctrine of preemption, as well as the entire theory of federal supremacy,

embodied in Article VI, ¶2 of the United States Constitution.

While the City Council claims that it has the requisite authority, by virtue of the Self-Government act, "it begs the question to say that the Council's own interpretation of the Home Rule Act should be presumed valid. The Council itself is the result, not the initiator, of the Home Rule Act . . ." *District of Columbia* v. *Washington Home Ownership Council, supra,* at 1351, n. 5.

It is self evident that the actions of the City Council are not justified by the Self-Government Act, that the Council's Workers' Compensation Act is in direct conflict with existing federal legislation, and that Congressional enactments must prevail over state or local regulations that conflict with them.

The City Council of the District of Columbia has attempted to repeal a Congressional statute, and remove a class of cases from the jurisdiction of the federal courts. A local legislative body must not be allowed to thus flaunt the fundamental premise of supremacy that underlies our federal system. By passing the new Workers' Compensation Act, the Council has displayed a remarkable degree of indifference toward the United States Constitution and enactments of the United States Congress in pursuance of a Constitutional mandate. A writ of certiorari must issue in order to firmly re-establish that the City Council is a body of limited authority and, more importantly, that the jurisdiction of the federal courts is not, and cannot be, the subject of state or local limitation.

B. The Worker's Compensation Act of 1979 Violates Numerous Express Provisions of the Self-Government Act

Aside from the patent constitutional violations, the new Act violates numerous express provisions of the Self-Government Act. Simply stated, the new Act affects the jurisdiction of the federal courts, leading to the unavoidable conclusion that it exceeds the legislative power granted to the City Council in the Self-Government Act.

Moreover, the new Act also affects the jurisdiction of the District of Columbia Courts, as well as the powers and authority of the United States Department of Labor. Additionally, it affects matters not exclusively within the District of Columbia. The new legislation thus violates several independent express restrictions contained in the Self-Government Act.

1) The New Act Violates §602(a)(8) of the Self-Government Act

Section 602(a)(8) of the Self-Government Act, now codified at D.C. Code, 1981, §1-233(a)(8), states that the City Council has no authority to:

> enact any act or regulation relating to the United States District Court for the District of Columbia or any other court of the United States in the District other than the District Courts, or relating to the duties or powers of the United States Attorney or the United States Marshal for the District of Columbia.

This subsection encompasses four distinct legislative limitations, absolutely prohibiting interference with (1) the United States Court of Appeals for the District of Columbia Circuit; (2) the United States District Court for the District of Columbia; (3) the United States Attorney; and

(4) the United States Marshal. As demonstrated below, the District of Columbia Workers' Compensation Act of 1979 violates three of the four limitations.

Section 23(b)(3) of the new Act, codified at D.C. Code, 1981 § 36-322(b)(3) (Statutory Appendix, p. 16a), requires an appellant to seek review of compensation orders entered by the Mayor in the District of Columbia Court of Appeals under the District of Columbia Administrative Procedure Act, D.C. Code, 1978 Supp. §1-1501, *et seq.* Of necessity, the provision repeals the jurisdiction of the United States Court of Appeals, 33 U.S.C. §921(c) (Statutory Appendix, p. 9a), and thus constitutes an "act or regulation related to . . . [a] United States Court."

The District of Columbia has stated that the effect of the new Act is "simply to reduce the number of cases the United States Court of Appeals will review under the Longshoremen's Act." This statement is totally fallacious. When the United States Court of Appeals hears a case involving an injury to an employee of a private sector District of Columbia employer, it is *not* hearing a Longshore Act case. It is hearing a workers' compensation case arising under §36-501, *not* 33 U.S.C. §901, *et seq.* (Statutory Appendix, p. 6a). The new Act proposes to eliminate the power that the United States Court of Appeals has to review *any* case under §36-501. This is just as preposterous as if the City Council were to attempt to remove the United States Court of Appeals' jurisdiction under Title VII of the Civil Rights Act, the Freedom of Information Act or any other federal statute. Congress wrote §36-501 specifically intending appellate review to be in the United States Circuit Courts of Appeal, and, as discussed above, the City Council clearly has no authority to alter this provision.

Concurrently, §23(c) of the new Act, codified at D.C. Code, 1981, § 36-322(c) (Statutory Appendix, p. 17a), requires that all attempts to enforce compensation orders be filed in the Superior Court of the District of Columbia. This provision repeals the jurisdiction of the United States District Court to enforce orders under §36-501. Thus, the new Act also violates the second restriction listed in §602(a)(8).

Three sections of the Longshore Act, § 918(a), § 921(d), and § 927(b) (Statutory Appendix, pp. 6a, 10a), provide methods of enforcement in the United States District Courts against employers who default on compensation orders. Since these provisions of the Longshore Act are made applicable to the District of Columbia employers by D.C. Code, 1973, §36-501, it is irrefutable that the proposed change in jurisdiction from the United States District Courts to the Superior Court is an "act or regulation relating to the United States District Court . . ." and thus violates a second restriction of § 602(a)(8). To conclude otherwise necessarily ignores the legislative foundation upon which the current compensation system rests.

The new Act also violates the third restriction in §602(a)(8) because it limits the ability of the United States Marshal to effect service of orders, writs and processes "anywhere in the United States" under §21(c) of the Longshore Act. 33 U.S.C. §921(c) (Statutory Appendix, p. 9a). Since the new Act contemplates a local compensation system, nationwide service would not be permitted and, thus, the power of the United States Marshal would be restricted. While it is true that the United States Marshal now serves process for District of Columbia Court actions, D.C. Code, 1973, §13-302 (Statutory Appendix, p. 12a), their jurisdiction in those civil cases pursuant to

D.C. Code, 1973, §§11-942-43 (Statutory Appendix, p. 11a) is severely limited.

2) The District of Columbia Workers' Compensation Act of 1979 Violates §602(a)(4) and §431(a) of the Self-Government Act

Just as the new Act repeals the jurisdiction of the United States Courts, it necessarily increases the jurisdiction of the District of Columbia Courts. This action contravenes the explicit restriction in §602(a)(4) of the Self-Government Act (Statutory Appendix, p. 2a), which prohibits the City Council from affecting the jurisdiction of the District of Columbia Courts. As described in the *Statement of the Case, supra,* the original draft of the Self-Government Act was highly criticized because of its provision for City Council control over the District's judiciary. This criticism led to the blanket restriction encompassed in §602(a)(4). *See,* Home Rule for the District of Columbia, *supra,* p. 1076.

The District of Columbia has argued that since the D.C. Court of Appeals already has jurisdiction to hear cases under the D.C. Administrative Procedure Act, the transfer does not affect the jurisdiction of the Court of Appeals. It only increases the number of cases that the Court will hear under the D.C. Administrative Procedure Act. While it is true that the number of cases the Court will have to hear will dramatically increase,[7] it is also true that

[7]There are now approximately 200 pending appeals from Administrative Law Judge decisions to the Benefits Review Board of claims arising under §36-501. As described above, since the new Act eliminates an intermediate level appeal from a decision entered by the Mayor, the D.C. Court of Appeals would be called upon to hear all appeals of compensation claims. Since the new Act makes a number of drastic changes, the number of appeals to clarify the many ambiguous sections of the new Act will be staggering.

the Court will be hearing cases that it currently has no jurisdiction to hear. Thus, by definition, when the D.C. Court of Appeals hears its first workers' compensation appeal, it will be increasing its jurisdiction.

Moreover, the new Act also provides that the Superior Court will be empowered to enter enforcement orders and judgments. Nothing in the D.C. Administrative Procedure Act grants any jurisdiction to the Superior Court to enforce administrative orders. Furthermore, §431(a) of the Self-Government Act (Statutory Appendix, p. 1a) *specifically excludes* compensation matters from the jurisdiction of the Superior Court. That section states, *inter alia:*

> . . . The Superior Court has no jurisdiction over any civil or criminal matter over which a United States Court has exclusive jurisdiction pursuant to an Act of Congress. . .

Since enforcement of compensation orders is within the exclusive jurisdiction of the United States District Courts, compensation matters are outside the jurisdiction of the Superior Court. As a result, any attempt to give the Superior Court such jurisdiction must necessarily increase its current jurisdiction. Thus, any attempt to place such authority in the Superior Court also violates the express wording of § 602(a)(4) and § 431(a).

A similar endeavor to increase the jurisdiction of the D.C. Court of Appeals was ruled invalid in *Capitol Hill Restoration Soc., Inc.* v. *Moore, supra.* In that case, the City Council attempted to grant appellate review of administrative decisions in non-contested cases. The Court concluded that due to the limitations embodied in §602 (a)(4), the City Council was without authority to give the Court the power to review the case. The City Council's attempt in this case to grant the District of Columbia courts

jurisdiction over a class of cases that they are currently forbidden to hear is precisely analogous to the actions of the Council that were held invalid in *Capitol Hill Restoration.*

3) The District of Columbia Workers' Compensation Act of 1979 Violates §602(b) of the the Self-Government Act

The City Council has exceeded its legislative authority in yet another way. Section 602(b) (Statutory Appendix, p. 3a) clearly prohibits the District of Columbia from exercising "any greater authority" over any federal agency than was exercised by the Commissioner of the District prior to January 2, 1975.

It is unquestionable that the United States Department of Labor is a federal agency; it is also unquestionable that the Commissioner of the District of Columbia had no authority over the Department of Labor prior to January 2, 1975. Thus, it is equally unquestionable that any attempt to withdraw compensation claims from the jurisdiction of the Department of Labor constitutes an invalid exercise of authority by the City Council over a federal agency.

If Congress had wanted the District to have authority over compensation claims arising under §36-501, they could have provided for it expressly, just as they did for government employee compensation claims in §204(e) of the Self-Government Act. This was not done, even in light of the plea from the Secretary of Labor, Peter J. Brennan. In a letter addressed to the Honorable Archer Nelson dated October 24, 1973, the Secretary states:

> . . . We favor amendment of the bill [Self-Government Act] to transfer administration of the

> District of Columbia Compensation Act [§36-501] to the D.C. government. As you know, this law applies to private employment in the District.[8]

Given the clear and unequivocal restrictions of §602(b), an express transfer of authority by Congress, as proposed by Secretary Brennan, is the only way for the City Council to obtain jurisdiction over private sector compensation claims.

The only reasonable inference from Congress' failure to act upon the Secretary's request when the opportunity arose is that Congress desired to maintain control over private sector compensation claims. The well-known rule of legislative interpretation, "inclusio unius est exclusio alterius", clearly applies in this situation, even without §602(b). The United States Court of Appeals for the District of Columbia Circuit has applied similar reasoning to reach the conclusion that Congress' failure to provide for an express change in the Attorney General's authority over the Lorton Reformatory furlough program was a clear indication that Congress did not desire such a change. *Milhouse* v. *Levi,* 548 F.2d 357, 363 (D.C. Cir. 1976). The Court stated:

> Congress, in enacting both the Court Reform Act and the Home Rule Act, did not amend any of the provisions under which the Attorney General has regulated the furlough program at the Lorton Reformatory. In light of the long-standing practice in this regard, any assumption that failure to amend was due to inadvertence as distinguished from design would be to ignore the

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[8]Home Rule for the District of Columbia, *supra,* p. 3559.

> meticulous care Congress exhibited in conforming other statutory provisions to its legislative scheme for the District of Columbia [footnote omitted]. In short, if Congress had intended to alter the nature of the Attorney General's control over the Lorton furlough program, same could have been done by express provision.

This case raises precisely the same situation; the subject of workers' compensation was clearly before the Congress, but only public sector claims were transferred. This reasoning, in conjunction with the specific limitations in the wording of §602(b), leaves little question that Congress desired to maintain control of private sector claims.

4) The District of Columbia Workers' Compensation Act of 1979 Violates §602(a)(3) of the Self-Government Act

The new Act also exceeds legislative limitations imposed on the City Council by §602(a)(3) (Statutory Appendix, p. 2a). The District of Columbia has attempted to show that workers' compensation is a "local" function and thus not the type of federal function that is prohibited by §602 (a)(3). Among the restrictions included in this section, however, is the provision that the City Council has no authority to:

> . . . amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District.

The new Act violates several limitations contained in §602 (a)(3).

This section states that the City Council cannot amend or repeal an act which concerns "the functions . . . of the United States". While it is true that workers' compensation in the various states is a matter controlled by state law, that does not, *ipso facto,* mean that workers' compensation in the District of Columbia is not a function of the United States.

In addition to the Longshore Act, the federal government has enacted and operated workers' compensation programs of various types for many years, including the Defense Base Act; the War Hazards Act; and the Outer Continental Shelf Lands Act. Each is wholly administered by the federal government.

As noted *supra,* every aspect of the compensation system for employees of private sector District of Columbia employers is a federal function. The program is operated by federal employees in federal office buildings. Regulations are drafted by the Department of Labor, and appeals are handled by federal judges. Although compensation is a state function in the various states, in the District of Columbia compensation has always been a function of the United States Department of Labor and the Congress. Until Congress specifically delegates the private sector compensation system to the City Council, it must remain a function of the United States.

Section 602(a)(3) also prohibits the enactment of legislation pertaining to matters not exclusively within the District of Columbia. Since the jurisdiction of §36-501 is so broad as to cover the rights of an employee who is not a resident of the District of Columbia, it is obvious that repealing §36-501 affects matters not exclusively within the District.

A recent decision by the United States Court of Appeals for the District of Columbia Circuit illustrates the breadth

of §36-501; *Director, Office of Workers' Compensation Programs* v. *National Van Lines, Inc.*, 613 F.2d 972 (D.C. Cir. 1979). In that case, an employee was severely injured in the State of New York. The employee was a resident of Virginia and the employer's principal place of business was in Virginia. The Court, however, upheld the Benefits Review Board determination that the injury was compensable under §36-501. The Court pointed only to the fact that the employee had occasional duties in the District of Columbia and that the employer did business in the Washington metropolitan area. The Court stated:

> For most practical purposes, it makes little difference to the parties or to the jurisdictions, in the context of the policies behind the Act, precisely where the home or headquarters is. The most significant geographical division is the metropolitan Washington area.

National Van Lines, supra, at p. 979.

When this broad jurisdictional grant is compared to the jurisdiction proposed under the new Act, it becomes clear that many individuals who are not residents of the District of Columbia will be affected. Section 4(a) of the new Act, codified at D.C. Code, 1981, § 36-303, requires that the employment be "principally localized" in the District of Columbia (Statutory Appendix, p. 13a). Thus, many workers now covered by §36-501 will be deprived of federal benefits. Furthermore, the jurisdiction of the United States Court of Appeals in each of the Circuits will also be affected if §36-501 is repealed since, as described above, each Circuit presently has jurisdiction to hear §36-501 claims if the injury occurs in the geographical area covered by the Circuit.

CONCLUSION

It is submitted that the District of Columbia Workers' Compensation Act of 1979 violates constitutional restrictions on local governments and far exceeds the legislative authority granted to the City Council under the Self-Government Act. Each limitation on the authority of the Council is an independent restriction, and a violation of any one of these provisions would be sufficient to invalidate the new Act.

Wherefore, the Greater Washington Central Labor Council, Robert E. Petersen, Joslyn Williams and William Saunders, respectfully submit the Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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